

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 12-80(NxGen) Revised

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Anne Purcell, Associate General Counsel

Subject: Moving to NxGen as the Regional Office Case File

This memorandum is to advise you of our plans to make NxGen the official Regional Office case file for all cases filed on or after October 1, 2012 and thereby ease the burden of placing all documents in both the NxGen and paper files. For all cases filed from October 1, 2012 forward, all case file documents must be in NxGen and Board agents will no longer have to print and place documents in the paper case file. Set forth below is a discussion of the effective date, the documents that must be in NxGen, the documents that do not need to be kept in NxGen, signatures on documents issued by the Region, retention of certain paper and physical documents, and plans to solicit and share best practices.

Apart from the specific changes outlined in this memo, you may want to discuss local workflow issues related to this transition with your union representatives. Please note that such consultations shall not forestall the effective date of the transition to NxGen as the official case file. Also, please keep in mind that workflow issues were negotiated with the NLRBU in April 2011, as reflected in paragraphs A and E of the attached Memorandum of Agreement.

1. Effective Date

We want to eliminate as soon as possible the additional work and the potential for missing documents and unnecessary duplication that result from the requirement to keep all documents in both a paper and an electronic form. By October 1, 2012, all Regions will have had significant experience with NxGen. The Executive Secretary, the Solicitor, and the two GC Headquarters offices with the most frequent interface with the Regions, the Office of Appeals and the Division of Advice, are all fully functional in NxGen. Although some headquarters offices are not yet using NxGen, we expect they will be added in the near future.

2. Documents that Must Be in NxGen

The overarching records management guidelines for proper maintenance of NLRB official case files are to: 1) maintain only appropriate documents in the case files;

2) remove unnecessary documentation and duplication; and 3) follow the case file retention requirements of the NLRB records schedule.

For cases filed on or after October 1, 2012, the electronic version of the case file in NxGen will be the official Regional Office case file. Any paper version of those documents will be a duplicate. Board Agents are not required to maintain any paper documents, except as specified in 2(b) and (c) below. Thus, as documents are uploaded into NxGen with the exceptions noted below, the documents should be shredded rather than retained.

The documents that the Region must place in NxGen include the same documents that are required to be placed in the paper case file now. A list of some of the ULP documents is set forth in Attachment A. A list of some of the representation case documents is set forth in Attachment B. Neither list is intended to be all-inclusive. We realize that there will be additional documents and materials that must be in the file in specific cases.

a. Signatures on Documents Issued by the Region

Effective immediately, documents signed by the Regional Director (e.g. complaints, dismissal letters, docket letters) as well as other correspondence by Regional staff (e.g. request-for-evidence letters) should be retained in NxGen with either a conformed (/s/) signature or a digital signature that is pasted into the document. The Region is not required to scan the signed document into NxGen and generally should not create a pdf version merely to show that it was signed.

b. Certain Paper Documents to be Retained

Generally once a paper document is uploaded into NxGen, it should then be destroyed. However, we recognize that after an electronic version is uploaded into NxGen, it is important to retain the original paper format of certain documents. Examples include:

- Authorization cards in a *Gissel* case¹
- Where forgery of a document is suspected or involved²
- Signed NLRB affidavits

¹ Authorization cards and other forms of a showing of interest in a representation case should continue to be maintained separately and then returned to the party submitting the showing when the case is closed.

² If the original paper version of a document actually becomes analyzed – i.e. for an ink and paper analysis – and becomes introduced as evidence for that purpose, the introduced document should be treated as physical evidence at the close of the case, and not destroyed.

- Transcripts and exhibits from unfair labor practice trials and representation case hearings

Concerns have been raised about the admissibility of electronic affidavits if the affidavits become relevant to a related case. While we do not anticipate problems submitting scanned affidavits to the Board and the courts as evidence, our experience in this area is still limited. Thus, paper affidavits and authorization cards needed for trial should be retained for trial and for as long as the case is open.

Once the case is closed, the original affidavits should be shredded as long as: (1) a copy has been uploaded into NxGen; and (2) the case is not subject to other retention obligations, such as a litigation hold. Similarly, upon case closure the authorization cards and other forms of a showing of interest should be returned to the party submitting the showing unless there is a retention obligation. When a case is closed, if the Region anticipates that the original paper version of a document may be needed for a related open case, the Region should maintain the paper document as part of the related case. As we gain experience with the admissibility of the scanned affidavits, we may alter this approach.

Since Regions will be keeping paper copies of all affidavits while a case is open, they may wish to routinely create a paper file for each C case to hold the affidavits until the case is closed. Paper files for R cases can be created on an as needed basis.

Regions should also continue to retain and send to the Case Records Unit the paper copies of transcripts and exhibits in accordance with outstanding instructions.

c. Handling of Physical Evidence

Certain types of evidence present either uploading and/or potential trial issues. Included are recordings (video and audio in either analog or digital formats) and demonstrative, physical evidence such as picket signs, tire-puncturing devices including "jackrocks", or other evidence where the original item presented in the investigation may be appropriate to retain for potential authentication and trial purposes. With regard to other types of demonstrative, physical evidence deemed necessary for decision-making or potential trial purposes, a picture of such evidence with perspective, as appropriate (ruler, held by hand, etc.) should be uploaded into the NxGen case file. Additionally, the physical evidence should be retained while the case is open.

Recordings should be uploaded into NxGen when possible along with a picture of the physical format in which the recordings were presented for precise identification. Additionally, the physical device (whether DVD, CD, CD-ROM, flash drive, etc.) containing the recording should be retained and sent to Case Records for cases that are designated for permanent retention. For cases not designated for permanent retention, the Region should maintain the physical evidence for 6 years.

d. Disposition Upon Case Closure

Disposition of physical evidence that has been retained as discussed above in 2.b. and 2.c. upon case closure depends on whether the case is selected for permanent (historical) retention.

- Files Selected for Retention - "Permanent" Cases

After case closure, if a case is selected for historical (permanent) retention in the National Archives, the physical evidence should be sent to the Case Records Unit (CRU).

- All Other Cases

For all cases not selected for permanent retention, all demonstrative, physical evidence except recordings which could not be uploaded to NxGen, authorization cards in a *Gissel* case (see footnote 1), and documents analyzed for forgery (see footnote 2) should be destroyed upon case closure as long as: (1) a picture has been uploaded into NxGen; and (2) the case is not subject to other retention obligations, such as a litigation hold. All recordings that could not be uploaded into the NxGen case file and documents analyzed for forgery should be retained in the Regional office for 6 years.

3. Documents that Should Not be Kept

In the routine course of business and in the absence of a litigation hold, Regions are not required to retain or place certain documents in the NxGen case file. Instead, these documents should be destroyed no later than case closure:

- Envelopes or delivery information except in the rare instances when timing is an issue
- Fax or other duplicate copies of a document also sent by hard copy (usually by overnight delivery or U.S. mail), except in the rare instances when timing is an issue
- Routing slips
- Multiple copies of the same document, e.g. when a copy is sent to the Regional Director and to the Board agent.
- Drafts of documents such as a dismissal letter, complaint, brief or decision
- Copies of cases saved when conducting legal research.

In the absence of a litigation hold, duplicate documentation of the NxGen case file which was retained electronically in Outlook, hard drives, and network drives for ease and convenience of reference, should be deleted as the documents are placed in NxGen (except as noted above) and certainly no later than case closure.

Documents received pursuant to the appellate court mediation process should NOT be uploaded into NxGen and, in accordance with the mediation process, should be returned to the party who provided them when mediation is concluded. Similarly, documents such as notes and spreadsheets that are prepared based on information received or discussed in the appellate court mediation process should NOT be uploaded into NxGen.

Documents relating to and received pursuant to the Board's ADR process *should* be uploaded into NxGen.

4. Best Practices

One best practice we wholeheartedly endorse is to continue to encourage the parties to e-file their documents. This obviously saves time and resources. Whenever the Region has the opportunity to recommend this process in outreach activities, we encourage you to do so. In furtherance of this best practice, regions are to:

- Use the template for EAJA letters which includes a paragraph encouraging parties to e-file their documents;
- Include a paragraph strongly encouraging parties to e-file their documents in any regional office newsletter sent to local practitioners and parties;
- Encourage e-filing in all outreach activities with our stakeholders.

We also strongly suggest, to the extent practicable, that documents be uploaded as soon as they are created or received. This will permit appropriate review of the case file as the case progresses and will avoid the necessity of uploading a large number of documents at one time.

Another best practice is to place the date of the document in the naming convention so as to allow for easy identification of appropriate documents at a later date.

The switch to the electronic case file will save time in many ways. Users will no longer have to print certain documents and place them in the paper file, and the Region will no longer have to box and move files at the end of the year to make room for the next year. While this is good, we recognize that the transition must be managed carefully. Questions may arise about how best to implement the new procedure. To assist with this effort, in December 2012 after the Regions have had some experience with the new system, we will ask Regions to report best practices to us so that we may share them with everyone.

Thank you for your continued efforts in NxGen. If you have any questions regarding this memorandum, please contact your AGC or Deputy or the undersigned.

cc: NLRBU

Attachments

A. P.

ULP DOCUMENTS THAT SHOULD BE KEPT IN NXGEN INCLUDE:

A. Documents Uploaded and/or Received by Field Personnel:

- Charges and Amended Charges
- Docketing letters
- Affidavits of service
- Signed affidavits
- Documentary evidence
- E-mails and other correspondence with the parties and others regarding the case
- Commerce questionnaires and other forms submitted by parties
- Telephone Logs
- Memoranda regarding conversations about the case or the investigation or other aspects of processing the case
- Investigative subpoenas (including applications for subpoenas)
- Documents containing casehandling recommendations (e.g. agenda minutes, FIRs, recommendations to approve withdrawal, recommendations to approve non-board settlement agreement)
- Decisional documents
- Deferral letters and documents relating to follow-up on deferrals
- Dismissal letters
- Comments on appeal
- Informal settlement agreements
- Withdrawal requests and approvals
- Non-Board settlements
- Submissions to Injunction Litigation Branch (10(j) requests and recommendations)
- Submissions to Regional Advice Branch
- Complaints (including amended complaints)/compliance specifications
- Post-complaint orders
- Service of all complaints and orders
- Answers to complaints/compliance specifications
- Trial subpoenas (including applications for subpoenas)
- Pre-trial briefs
- Submissions to CLCB
- Recommendations for Enforcement
- Correspondence (letters, emails, telephone logs, etc) with the parties about compliance and information.
- All calculations to support backpay figures in compliance cases and cases which eventually settle.

B. Documents Uploaded by GC Headquarters and Board Offices

- Responses from HQ Offices (RAB, ILB, CLCB, etc.)
- Post-hearing briefs in cases pending before an ALJ or the Board
- ALJ, Board and Court decisions and orders

**REPRESENTATION CASE DOCUMENTS THAT SHOULD BE KEPT IN NXGEN
INCLUDE:**

- Petitions and Amended Petitions
- Docketing letters
- Affidavits of service
- Collective-bargaining agreements
- Commerce questionnaires and other forms submitted by parties
- Signed affidavits
- Documentary evidence
- E-mails and other correspondence with the parties and others regarding the case
- Telephone Logs
- Dismissal letters and orders
- Notice of Representation Hearing and Orders Rescheduling and Affidavits of Service of the Notice and Orders
- Letters and orders approving withdrawal requests
- Hearing officer reports
- Decisions and Directions of Election
- Decisions and Orders
- Stipulated Election Agreements
- Correspondence with the parties
- Memoranda regarding conversations about the case
- Election Notices
- Sample ballots
- Tally of Ballots
- Designation of Observers
- Requests to Proceed
- Briefs submitted in Pre-Election and Post-Election Hearings
- Objections
- Post-Election Reports and Supplemental Decisions
- Certifications of Representative and Results

B. Documents Uploaded by GC Headquarters and Board Offices

- Requests for Review and related briefs
- Board Decisions and Orders